



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

EHARA Gaku, et al.

Group Art Unit: 1645

Serial No.: 10/730,258

Examiner: L. J. Tongue

Filed: December 9, 2003

P.T.O. Confirmation No.:3331

For: PROCESS FOR PRODUCING SPORANGIA OF BACILLUS POPILLIAE,  
CONTROL AGENT AND CONTROLLING METHOD

DECLARATION UNDER 37 CFR 1.131

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

We, Gaku Ehara, Masaharu Kimura, Hideji Nishihashi,  
Tomoko Yokoyama, Makoto Hasegawa, Masao Tanaka, Azusa  
Fujiie and Shinichi Aoyagi, do hereby declare:

1. That we are the inventors of the above-reference patent application, USSN 10/730,258, as shown on the Declaration filed on September 24, 2001.
2. That we have read the Office action dated June 20, 2005, and are aware of the rejection of claims 1-6 under 35 U.S.C. 102(a) over "Ebara, T. et al.," [sic] (JP2002-355030), which was published on December 10, 2002.

3. That we invented the present invention, as claimed, in Japan, a WTO country, before December 10, 2002.

4. That we, Gaku Ehara, Masaharu Kimura, Hideji Nishihashi, Tomoko Yokoyama, Makoto Hasegawa, Masao Tanaka, Azusa Fujiie and Shinichi Aoyagi, are the inventors listed on published Japanese application JP2002-355030, and the this published documents therefore provides a showing of facts of our proof of invention of the present invention prior to December 10, 2002 (the publication date of JP2002-355030), in accordance with 37 CFR1.131(b).

5. That we are aware that the Examiner has requested a verified translation of JP2002-355030 in support of our argument, and that we have herewith provided a verified translation of this document.

6. That the list of the inventors in the verified translation of JP2002-355030 can be seen to be the same as the inventors of the present U.S. application.

7. That, in particular, the demonstration of invention of claim 1 of the present application may be found in claim 1 and paragraph [0017] of JP2002-355030. Claim 1 of JP2002-355030 differs from claim 1 of the present application only in having a limitation on the amount of absorbent (i.e.,

adsorbent). Paragraph [0017] of JP2002-355030 states:

"Although there is no particular restriction on the concentration of the absorbent in the medium used for the present invention provided it is within a range at which the effects of the present invention are achieved, it is preferably 0.05 to 5% by weight based on the medium."

That is, the specification of JP2002-355030 describes the invention with no particular limitation on the concentration of absorbent, as in claim 1 of the present application.

Similarly, claims 2, 3, 4 and 5 of JP2002-355030 demonstrates invention of claim 2, 3, 5 and 6, respectively, of the present invention.

The specification of JP2002-355030 in paragraph [0025] supports the limitation on pyruvic acid of present claim 4.

8. We, Gaku Ehara, Masaharu Kimura, Hideji Nishihashi, Tomoko Yokoyama, Makoto Hasegawa, Masao Tanaka, Azusa Fujiie and Shinichi Aoyagi, the undersigned declare that all statements made herein of their own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001, of Title 18 of the United States Code

and that willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Gaku Ehara Signed this 11 day of October, 2005

Mr. Gaku Ehara

Masaharu Kimura Signed this 11 day of October, 2005

Mr. Masaharu Kimura

Hideji Nishihashi Signed this 11 day of October, 2005

Mr. Hideji Nishihashi

Tomoko Yokoyama Signed this 12 day of October, 2005

Ms. Tomoko Yokoyama

Makoto Hasegawa Signed this 12 day of October, 2005

Mr. Makoto Hasegawa

Masao Tanaka Signed this 12 day of October, 2005

Mr. Masao Tanaka

Azusa Fujiie Signed this 13 day of October, 2005

Ms. Azusa Fujiie

Shinichi Aoyagi Signed this 12 day of October, 2005

Mr. Shinichi Aoyagi

Attachment: Copies of Japanese application JP2002-355030  
and verified English translation